

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1998-005651

12/06/2011

JUDGE DAVID J. PALMER

CLERK OF THE COURT

S. Stewart

Deputy

IN RE THE MATTER OF
KRISTY L CARMAN

KRISTY L CARMAN
UP

AND

BRYAN STOVALL

BRYAN STOVALL
4515 W RUSHMORE DR
ANTHEM AZ 85087

FAMILY COURT SERVICES-CCC

RULING

The Court convened an evidentiary hearing on October 7, 2011 on Respondent/Father's December 28, 2010 Petition for Contempt. Petitioner/Mother filed a Response to that Petition, and also filed a Request to Reinstate Child Support on June 3, 2011.

The parties are the parents of son Spencer, born October 6, 1997. Previously, Father had an obligation to pay child support to Mother under a court order, which involved the State of Arizona as a party, as the matter previously fell under the category of IV-D.¹ A dispute arose regarding child custody and child support, including arrearages. In the meantime, Mother had remarried.

To settle the dispute, Mother, Father and the State entered into an agreement which was signed by Judge Daniel Martin on July 15, 2009. The crux of that agreement was that Mother agreed that she and her new husband would adopt Spencer with Father agreeing to sign necessary documents to allow that adoption to go forward.

¹ Subsequent to the pleadings being filed relative to the issues at hand, an order has been entered removing the case from IV-D status.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1998-005651

12/06/2011

Notably and critically, Mother's husband, Stephen Carman is not a party to this case and was not a signatory to that agreement.

In exchange for that agreement by Mother to have Mr. Carman to complete that adoption, the parties further agreed as follows:

Mother agreed:

- To waive, effective January 1, 2009 any and all child support arrears due and owing by Father;
- To waive any future claim for child support going forward from January 1, 2009, "as there is a pending step-parent adoption";
- To refund any and all child support (including payments made on arrears) paid to her in full by Father as of January 1, 2009, with that refund payment to be made not later than 30 days after the adoption of Spencer was finalized;
- To waive all outstanding judgments, claim for reimbursement, or other claims that may be made against each other regarding any issue that results from the underlying family court case herein, which was to include back claims or future claims in this matter, to include reimbursement for medical bills, attorney's fees, taxes or other monetary issues.
- To go her separate way and stay away from Father's family, with the exception of allowing Spencer to have a relationship with his cousins Makenzie, Kaylee and Courtney. Mother was also to not involve herself in Father's family court case, FC2004-011374;
- To have Spencer adopted as soon as the juvenile court can set a hearing;
- That violations of the agreement will be sanctionable via a finding of contempt.

Father agreed:

- To waive all custody and parenting time rights with respect to Spencer due to the adoption and to no longer be involved in Spencer's life;
- That the future child support amount would \$0 regarding Spencer due to the pending step-parent adoption;
- To waive any remaining amount of money owed to him for the judgment he received against Mother for back taxes owed to him by Mother in this matter;
- To waive all outstanding judgments, claim for reimbursement, or other claims that may be made against each other regarding any issue that results from the underlying family court case herein, which was to include back claims or future claims in this matter, to include reimbursement for medical bills, attorney's fees, taxes or other monetary issues.
- To go his separate way and have no interaction with Mother or her family.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1998-005651

12/06/2011

Since this agreement was reached, Mr. Carman has chosen to not adopt Spencer, which is his right. He was not a signer on the agreement and he cannot be compelled to adopt Spencer against his wishes. As a result, the key provisions of the agreement are unenforceable and of no effect.

CONTEMPT

Father alleges that Mother is in contempt of the agreement for the following reasons:

- Failing to effectuate the adoption,
- Failing to refund to Father the child support he had paid,
- Failing to stay out of Father's life.

There is no dispute that the adoption has not been accomplished, and that Mother has not refunded the child support amounts as contemplated.

The Court finds the agreement to be null and void as its key provision, the adoption of Spencer, is not going to take place. The individual provisions of the agreement are not stand alone agreements, independent of the other provisions. In paragraph 5 of the agreement, the parties "agree[d] to fully define each party's rights and to resolve any potential conflicts" "as a result of the pending step-parent adoption of the minor child." As a result, the other parts of the agreement are meaningless without the adoption.

THE COURT FINDS that Mother has not violated any orders of the Court. With respect to the issue of the adoption, Mother cannot comply with that requirement which requires the consent of and action by Mr. Carman. For whatever reason and due to whatever motivation, he has chosen not to legally adopt Spencer. He cannot be compelled to do so by either the Court or by Mother.

With respect to the issue of the refund to be paid to Father, it is clear that the adoption of Spencer was the centerpiece of the agreement, and Father's waiver of his parental rights was clearly being done at least in part due to those funds being refunded. That refund was to take place within 30 days after that adoption was finalized.

As to the final issue, again it is clear that the notion that the parties would stay out of each other's lives was contingent upon the adoption going forward. Given that Father is now asking that he be awarded parenting time, the notion of staying out of each other's lives becomes somewhat impractical. The Court also finds that based upon the evidence presented that Mother is not in substantial violation of this provision. Interestingly, Father has sent numerous items of

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1998-005651

12/06/2011

correspondence to Mother, which she claims was harassment. Like the alleged violations named by Father the Court does not find them to be substantial.²

For the reasons stated,

IT IS ORDERED denying Father's Motion for Contempt.

REINSTATEMENT OF CHILD SUPPORT

Mother is asking that Father's obligation to pay child support be reinstated due to the adoption not going forward. Father alleges that the parties agreed that his child support obligation would be terminated due to the adoption. Mother alleges that under the auspices of A.R.S. §8-539 a court order cannot terminate a parent's child support obligation unless an adoption is finalized which terminates that parent's rights.

Mother is correct. As stated in *Schnepp v. State of Arizona*, 183 Ariz. 24, 899 P.2d 185 (App. 1995), "only a final adoption order suffices to terminate the parent's duty of support." *Id.* at 28, 899 P.2d at 189.

IT IS ORDERED granting Mother's Request to Reinstate Child Support. Although the parties' agreement and associated court order has been determined to be void, it did create a reasonable expectation that Father would not be paying child support, and for a time there was an order entered that tolled Father's support requirement. Thus it is not fair to have this order be retroactive past the service date of Mother's request to reinstate or to require Father to be responsible for arrearages from July 15, 2009 until July 1, 2011.

IT IS THEREFORE ORDERED reinstating Father's obligation to pay child support in the amount of **\$856.46**, plus **\$50.00** per month against arrearages previously accumulated. This order is retroactive to July 1, 2011.

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

IT IS FURTHER ORDERED reinstating child custody and parenting time orders that were in effect prior to the entry of the parties' agreement noted herein.

² Should there be Orders of Protection in place against either party, such orders are to be followed.
Docket Code 926

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1998-005651

12/06/2011

In the event that either party believes that there have been substantial and continuing changes in the circumstances of the parties or the child, he or she may file a petition to modify child custody, parenting time or child support.

IT IS FURTHER ORDERED signing this minute entry as a formal written order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/S/: HONORABLE DAVID J. PALMER

JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Exhibit Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.